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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

JOHNATHON IRISH

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19-cr-251-LM-01
February 12, 2020
1:40 p.m.

TRANSCRIPT OF JURY TRIAL
DAY FOUR - AFTERNOON SESSION
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY

APPEARANCES:

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U.S. Attorney's Office

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P R O C E E D I N G S

THE COURT: You have now heard all the evidence in this case and arguments by the lawyers. It is my duty at this point in the trial to instruct you on the law that you must apply in reaching your verdict. It is your duty to follow and apply the law as I give it to you, but you alone are the judges of the facts. Please do not consider any statement that I have made in the course of trial or make in these instructions as any indication that I have any opinion about the facts of this case or what the verdict should be. You should not single out any one instruction but instead apply these instructions as a whole to the evidence in this case.

You are the sole and exclusive judges of the facts. You must weigh the evidence that has been presented impartially, without bias, without prejudice, and without sympathy. You must make a determination as to what the facts are and what the truth is based upon the evidence presented in this case. You must decide the case by applying the law as it is given to you in these instructions to the facts as you find them to be from the evidence.

You must apply the law regardless of any opinion you may have as to what the law ought to be. It would be a violation of your sworn duty if you were to

1 base your verdict upon any view of the law other than
2 that reflected in these instructions just as it would be
3 a violation of your sworn duty as judges of the facts to
4 base a verdict upon anything but the evidence presented
5 in this case.

6 The fact that the prosecution is brought in
7 the name of the United States of America entitles the
8 government to no greater consideration than that
9 accorded to any other party to a litigation. By the
10 same token, it is entitled to no less consideration.
11 All parties, whether government or individuals, stand as
12 equals at the bar of justice.

13 The weight of the evidence is not necessarily
14 determined by the number of witnesses testifying on
15 either side. You should consider all the facts and
16 circumstances in evidence to determine which of the
17 witnesses are worthy of belief. In reviewing the
18 evidence, you should consider the quality of the
19 evidence and not the quantity. It is not the number of
20 witnesses or the quantity of testimony that is important
21 but the quality of the evidence that has been produced
22 that is important. You must consider all of the
23 evidence no matter which side produced or elicited it.

24 The evidence in this case consists of the
25 sworn testimony of the witnesses, and all the exhibits

1 received in evidence, and any facts which have been
2 admitted or stipulated.

3 During your deliberations you must entirely
4 disregard any evidence to which an objection was
5 sustained by the Court and any evidence ordered stricken
6 by the Court.

7 During the trial you were told that the
8 government and the defendant agreed to certain facts.
9 We call this a stipulation. A stipulation means that
10 the government and the defendant accept the truth of a
11 particular proposition or fact. Because there is no
12 disagreement between the parties regarding stipulated
13 facts, there was no need for either side to introduce
14 evidence relating to those facts. The parties needed
15 only to admit the stipulations into evidence. You must
16 accept the stipulations as facts to be given whatever
17 weight you choose.

18 During the trial you heard a conversation that
19 was recorded. This is proper evidence for you to
20 consider. You were also given a transcript to read
21 along as the recording was played. As the Court
22 instructed you at the time, that transcript was provided
23 solely to help you follow the recorded conversation. If
24 you believe at any point the transcript said something
25 different from what you heard on the tape, remember it

1 is the tape that is the evidence, not the transcript.
2 Any time there's a variation between the tape and the
3 transcript, you must be guided solely by what you heard
4 on the tape and not by what you saw in the transcript.

5 Certain things are not evidence and cannot be
6 considered by you as evidence.

7 1. Arguments and statements by the lawyers
8 are not evidence. What they've said in their opening
9 statements, closing arguments, questions to the
10 witnesses, and at other times is intended to help you
11 interpret the evidence but it is not evidence. If the
12 facts as you remember them differ from what the lawyers
13 have said about those facts, your memory controls. If
14 the law as stated by the lawyers differs from the law as
15 stated by me, you must take the law from me. You are
16 not to be concerned with the wisdom of any rule of law.

17 2. Objections raised by the lawyers are not
18 evidence. Lawyers have a duty to object when they
19 believe a question is improper under the rules of
20 evidence. I must rule on objections, and I have not
21 intended to indicate in any way by my rulings what the
22 verdict should be in this case. You should not be
23 influenced by the lawyers' objections or by my rulings
24 on those objections.

25 3. Anything you may have seen or heard when

1 the Court was not in session is not evidence. You are
2 to decide the case solely on the evidence received at
3 trial.

4 There are two types of evidence which you may
5 properly use in deciding this case, direct and
6 circumstantial.

7 Direct evidence is the testimony given by a
8 witness about what that witness has seen, has heard, or
9 has observed, or what that witness knows based on
10 personal knowledge. Direct evidence also includes any
11 exhibits that have been marked.

12 Evidence may also be used to prove a fact by
13 inference, and this is referred to as circumstantial
14 evidence. In other words, from examining direct
15 evidence you may be able to draw certain inferences
16 which are reasonable and justified in light of your
17 daily experience. Such inferences constitute
18 circumstantial evidence. Circumstantial evidence may be
19 given the same weight by you as direct evidence.

20 During the course of the trial I instructed
21 you that certain evidence was being admitted for a
22 limited purpose. It is your duty to follow these
23 instructions during your deliberations.

24 The fact that an indictment is returned
25 against an individual is not evidence of that person's

1 guilt. An indictment is merely a formal method of
2 accusing an individual of a crime in order to bring that
3 person to trial. It is you, the jury, who will
4 determine whether an individual is guilty or not guilty
5 of the offense charged based on a consideration of all
6 the evidence presented and the law applicable to the
7 case. Therefore, you must not consider the indictment
8 in this case as any evidence of the guilt of the
9 defendant, nor should you draw any inference from the
10 fact that an indictment has been returned against him.

11 The defendant, although accused, begins a
12 trial with a clean slate with no evidence against him.
13 The law permits nothing but legal evidence presented
14 before the jury to be considered in support of any
15 charge against a defendant. The law presumes every
16 defendant to be innocent until proven guilty beyond a
17 reasonable doubt. The burden of proving a defendant
18 guilty rests entirely on the government. The defendant
19 does not have to prove his innocence. The defendant
20 enters the courtroom and is presumed to be innocent
21 until the government convinces you beyond a reasonable
22 doubt that he is guilty of every essential element of
23 the offense charged.

24 The presumption of innocence alone is
25 sufficient to acquit a defendant unless the jury is

1 satisfied beyond a reasonable doubt that the defendant
2 is guilty after a careful and impartial consideration of
3 all of the evidence in the case.

4 The burden is always on the government to
5 prove guilt beyond a reasonable doubt. This burden
6 never shifts to a defendant. The law does not impose
7 upon a defendant in a criminal case the burden or duty
8 of calling any witnesses or producing any evidence.

9 If after careful and impartial consideration
10 of all the evidence in this case you have a reasonable
11 doubt that the defendant is guilty of the charge set
12 forth in the indictment, you must find the defendant not
13 guilty. A jury must never find a defendant guilty based
14 on mere suspicion, conjecture, or guess. Rather, you
15 must decide the case on the evidence that is before you
16 and on the reasonable inferences that can be drawn from
17 that evidence.

18 In determining what the facts are and what the
19 truth is, you must necessarily assess the credibility of
20 each witness and determine what weight you will give to
21 each witness's testimony. By credibility, I mean the
22 believability or truthfulness of a witness.

23 You should carefully scrutinize all the
24 testimony given, the circumstances under which each
25 witness has testified, and every matter in evidence

1 which tends to show whether a witness is worthy of
2 belief or not worthy of belief. For example:

3 Consider each witness's intelligence, motive,
4 state of mind, demeanor, and manner while testifying.

5 Consider the witness's ability to observe or
6 to know the matters about which that witness has
7 testified and whether the witness impresses you as
8 having an accurate recollection of those matters.

9 Consider whether the witness had any reason
10 for telling the truth or not telling the truth, whether
11 the witness had an interest in the outcome of the case,
12 whether the witness had anything to gain or lose as a
13 result of his or her testimony, whether the witness had
14 any friendship, relationship, or animosity towards other
15 individuals involved in the case, whether the witness's
16 testimony was consistent or inconsistent with itself or
17 with the testimony of other witnesses.

18 Consider the extent, if any, to which the
19 testimony of each witness is either supported or
20 contradicted by other evidence in the case.

21 The testimony of a witness may be discredited,
22 or as we sometimes say impeached, by showing that the
23 witness previously made statements that are different
24 than or inconsistent with his or her testimony here in
25 court.

1 Inconsistent or contradictory statements which
2 are made by a witness outside of court may be considered
3 only to discredit or impeach the credibility of the
4 witness and not to establish the truth of these earlier
5 out-of-court statements.

6 You must decide what weight, if any, should be
7 given the testimony of a witness who has made prior
8 inconsistent or contradictory statements. In making
9 this determination, you may consider whether the witness
10 purposely made a false statement or whether it was an
11 innocent mistake, whether the inconsistency concerns an
12 important fact or whether it had to do with only a small
13 detail, whether the witness had an explanation for the
14 inconsistency and whether that explanation appealed to
15 your common sense.

16 You should give the testimony of each witness,
17 both on direct and cross-examination, the weight you
18 think it deserves. You're not required to believe the
19 testimony of any witness simply because that witness was
20 under oath. You may believe or disbelieve all or part
21 of the testimony of any witness. It is within your
22 province to determine what testimony is worthy of belief
23 and what testimony may not be worthy of belief.

24 You've heard the testimony of witnesses who
25 have provided evidence under agreements with the

1 government, received money from the government in
2 exchange for providing information, or testified under a
3 grant of immunity. Specifically as to the witness who
4 testified under a grant of immunity, Roscoe Whitney,
5 immunity means that his prior statements to the FBI and
6 the testimony he gave in this trial may not be used
7 against him in any subsequent criminal proceeding.
8 However, if he testified untruthfully, he could be
9 prosecuted for perjury or making a false statement even
10 though he was testifying under a grant of immunity.

11 Some people in these positions, that is, some
12 people who have provided evidence under an agreement
13 with the government, received money for providing
14 information to the government, or who received a grant
15 of immunity, are entirely truthful when testifying.
16 Still, you should consider the testimony of such
17 witnesses with particular caution. The witnesses may
18 have had reason to make up stories or exaggerate what
19 others did because they wanted to help themselves. You
20 must determine whether the testimony of such witnesses
21 has been affected by any interest in the outcome of this
22 case, any prejudice for or against the defendant, or by
23 any of the benefits these witnesses have received from
24 the government.

25 During the course of this trial you've heard

1 several law enforcement agents testify. You should
2 consider the testimony of a law enforcement agent the
3 same as the testimony of any other witness in the case.
4 In evaluating the credibility of a law enforcement
5 agent, you should use the same tests which you apply to
6 the testimony of any other witness. In no event should
7 you give the testimony of a law enforcement agent any
8 more credibility or any less credibility simply because
9 of that witness's position.

10 You've heard testimony from a person described
11 as an expert. An expert witness has special knowledge
12 or experience that allows the witness to give an
13 opinion.

14 You may accept or reject such testimony. In
15 weighing the testimony, you should consider the factors
16 that generally bear upon the credibility of a witness as
17 well as the expert witness's education and experience,
18 the soundness of the reasons given for the opinion, and
19 all other evidence in the case.

20 Remember that you alone decide how much of a
21 witness's testimony to believe and how much weight it
22 should be given.

23 After assessing the credibility of each
24 witness you will assign as much weight to his or her
25 testimony as you deem proper. You may believe or

1 disbelieve all or part of the testimony of any witness.
2 You determine what testimony is worthy of belief and
3 what testimony may not be worthy of belief. The
4 testimony of a single witness may be sufficient to prove
5 any fact, even if a greater number of witnesses may have
6 testified to the contrary, if after considering all the
7 other evidence you believe that single witness.

8 The fact that the defendant did not testify
9 must not be considered by you in any way or even
10 discussed in your deliberations. He has an absolute
11 right not to take the witness stand, and you must not
12 draw any inferences from the fact that he exercised that
13 right.

14 You are not to give any consideration to
15 potential punishments or sentences in deciding this
16 case. The punishment provided by law for the offense
17 charged in the indictment is a matter exclusively within
18 the province of the Court and should never be considered
19 by the jury in any way in arriving at an impartial
20 verdict. You must decide this case based on the
21 evidence you've seen and heard and on the law as I give
22 it to you and not on any punishment you believe the
23 defendant might receive or could receive.

24 The indictment consists of one count charging
25 the defendant with possessing firearms in or affecting

1 interstate commerce after having been convicted of a
2 crime punishable by imprisonment for more than one year
3 in violation of 18 U.S.C. Sections 922(g)(1).

4 I'll describe the charge against the defendant
5 in more detail in a moment.

6 The indictment alleges that the crime the
7 defendant is charged with occurred "on or about" certain
8 dates. The government does not have to prove with
9 certainty the exact date or dates of the alleged
10 offense. It is sufficient if the government proves
11 beyond a reasonable doubt that the offense occurred on a
12 date reasonably near the dates alleged.

13 In the indictment the government alleges that
14 from December 26, 2018, to on or about November 17,
15 2019, the defendant knowingly possessed certain firearms
16 while also knowing that he had previously been convicted
17 of a felony, that is, a crime punishable by imprisonment
18 for a term exceeding one year. Specifically, the
19 government alleges that the defendant possessed the
20 following firearms that were in or affecting interstate
21 commerce: A Sig Sauer, Model 1911, .45 caliber pistol,
22 S/N, or serial number, GS 34120; and a Zijiang Machinery
23 Company, Model Catamount Fury, 12-gauge shotgun, serial
24 number CAT-002586.

25 In order for you to find the defendant guilty

1 of the crime charged, the government must prove each of
2 the following elements beyond a reasonable doubt:

3 First, that the defendant has been convicted
4 in any court of at least one felony, that is, a crime
5 punishable by imprisonment for a term exceeding one
6 year;

7 Second, that the defendant knew he had been
8 convicted of a felony;

9 Third, that after being convicted of a felony
10 the defendant knowingly possessed the firearms charged
11 in the indictment; and

12 Fourth, that the firearms charged in the
13 indictment were in or affecting interstate commerce.

14 I'll now give you a bit more detail about each
15 of these elements.

16 To find the defendant guilty of the offense
17 charged, the first element that the government must
18 prove to you beyond a reasonable doubt is that the
19 defendant has been convicted in any court of a crime
20 punishable by imprisonment for a term exceeding one year
21 and that the conviction occurred prior to the date on
22 which the defendant is alleged to have possessed the
23 firearms described in the indictment.

24 The parties have stipulated, or agreed, that
25 on December 11, 2014, the defendant was convicted of a

1 crime that is punishable by imprisonment for a term
2 exceeding one year. Because the parties agree on this
3 fact, there was no need for the government to introduce
4 any evidence relating to it. As I explained earlier,
5 you must accept this stipulation as a fact to be given
6 whatever weight you choose.

7 The second element the government must prove
8 beyond a reasonable doubt is that the defendant knew he
9 had been convicted of a felony offense, that is, he knew
10 he had been convicted in any Court of a crime punishable
11 by imprisonment for a term exceeding one year.

12 Knowledge in this context means that the
13 defendant was aware that he had been convicted of a
14 crime punishable by imprisonment for a term exceeding
15 one year.

16 The parties have stipulated, or agreed, that
17 at the time the defendant is alleged to have committed
18 the charged offense he knew that he had previously been
19 convicted of a crime punishable by imprisonment for a
20 term exceeding one year. Because the parties agree on
21 this fact, there was no need for the government to
22 introduce any evidence relating to it. As I stated
23 before, you must accept this stipulation as a fact to be
24 given whatever weight you choose.

25 The third element that the government must

1 prove beyond a reasonable doubt is that after his felony
2 conviction, between December 26, 2018, and November 17,
3 2019, the defendant knowingly possessed the firearms
4 charged in the indictment.

5 The word knowingly means that the act was done
6 voluntarily and intentionally, not because of mistake or
7 accident. You may consider evidence of the defendant's
8 words, acts, or omissions, along with all of the other
9 evidence in deciding whether the defendant acted
10 knowingly. The government does not have to prove,
11 however, the defendant knew his conduct was illegal. It
12 must prove only that he knowingly possessed the firearms
13 and knew he had been convicted of a felony prior to that
14 possession.

15 The term firearm means any weapon which will,
16 is designed to, or may readily be converted to expel a
17 projectile by the action of an explosive. The term
18 firearm also includes the frame or receiver of any such
19 weapon.

20 The term possess means to exercise authority,
21 dominion, or control over something. It is not
22 necessarily the same as legal ownership. The law
23 recognizes different kinds of possession.

24 Possession includes both actual and
25 constructive possession of a gun.

1 A person who has direct physical control of a
2 gun on or around his person is then in actual possession
3 of it. Actual possession is the state of immediate,
4 hands-on physical possession of a gun.

5 A person who is not in actual possession of a
6 gun but who has both the power and the intention to
7 exercise control over a gun is in constructive
8 possession of it. Constructive possession exists where
9 a person has the power and intention of exercising
10 authority, dominion, or control over a gun. With
11 respect to constructive possession, a person must have
12 actual knowledge of the presence of a firearm in order
13 to have constructive possession of it.

14 Whenever I use the term possession in these
15 instructions, I mean actual as well as constructive
16 possession.

17 Mere proximity to a gun is not sufficient to
18 prove either actual or constructive possession, but
19 proximity to a gun is a factor to be weighed and
20 considered along with all of the other circumstances you
21 find to have existed in determining the issue of
22 possession. While brief contact with a gun does not
23 preclude a finding of possession, the length of contact
24 is a factor to be weighed and considered along with all
25 the other circumstances you find to have existed in

1 determining the issue of possession.

2 Possession also includes both sole and joint
3 possession. If one person alone has actual or
4 constructive possession, possession is sole. If two or
5 more persons share actual or constructive possession,
6 possession is joint. Whenever I have used the word
7 possession in these instructions, I mean joint as well
8 as sole possession.

9 The indictment alleges that the defendant
10 possessed two firearms. However, the government is not
11 required to prove that the defendant possessed both of
12 the firearms. You may find that the government has met
13 its burden on possession if you find that the defendant
14 knowingly possessed one of the two firearms charged in
15 the indictment. To find that the government has proven
16 this, you must agree unanimously on which firearms the
17 defendant knowingly possessed.

18 Finally, the government must prove that the
19 firearms charged in the indictment were in or affecting
20 interstate commerce. A firearm is in or affecting
21 interstate commerce if the firearm has traveled at some
22 time from one state to another. The travel need not
23 have been connected to the charge in the indictment,
24 need not have been in furtherance of any unlawful
25 activity, and need not have occurred while the defendant

1 possessed the firearms.

2 When you retire to the jury room to
3 deliberate, you may take with you this charge and the
4 exhibits admitted into evidence.

5 You will also take with you a form on which to
6 record your verdict. You will be able to view the
7 documentary exhibits in this case through an electronic
8 system called JERS. J-E-R-S stands for Jury Evidence
9 Recording System. In your deliberation room is a plasma
10 television. You will be able to view the exhibits from
11 that plasma television screen. It is operated by touch.
12 The courtroom deputy will show you a brief tutorial.

13 You should understand that you will also have
14 all documentary exhibits in paper copy to examine as
15 well. The JERS system is simply another way for you to
16 view the exhibits. The advantage is that you can all
17 see the exhibit on the screen and discuss that exhibit
18 while seeing it displayed on the screen. You may
19 consider any and all exhibits in the JERS system. You
20 can also use the JERS system to zoom in to an exhibit so
21 that all jurors can see an exhibit up close.

22 It is easy to use, especially after you see
23 the tutorial, but if you have a question about JERS, as
24 with any other question you might have, you must put it
25 in writing. Even if you need some sort of technical

1 assistance with JERS, you will need to put your request
2 in writing so that the court security officer can
3 present it to me. Before resolving any of your
4 questions, I show your written question to the lawyers.

5 The principles of law set forth in these
6 instructions are intended to guide you in reaching a
7 fair and just result in this case, which is important to
8 all of the parties. You are to exercise your judgment
9 and common sense without prejudice and without sympathy
10 but with honesty and understanding. You should be
11 conscientious in your deliberations and seek to reach a
12 just result in this case because that is your highest
13 duty as judges of the facts and officers of this court.
14 Remember also that the question before you can never be,
15 will the government win or lose the case. The
16 government always wins when justice is done regardless
17 of whether the verdict be guilty or not guilty.

18 When you have considered and weighed all of
19 the evidence, you must make one of the following
20 findings with respect to the offense charged:

21 1. If you have a reasonable doubt as to
22 whether the government has proved any one or more of the
23 elements of the crime charged, it is your duty to find
24 the defendant not guilty.

25 2. If you find the government has proved all

1 the elements of the crime charged beyond a reasonable
2 doubt, then you may find the defendant guilty.

3 As I explained before, the punishment provided
4 by law for the offense charged in the indictment is a
5 matter exclusively within the province of the Court and
6 should never be considered by you in any way in arriving
7 at an impartial verdict.

8 When you retire, you shall elect one member of
9 the jury as your foreperson. That individual will act
10 very much like the chairperson of a committee, seeing to
11 it that the deliberations are conducted in an orderly
12 fashion and that each juror has a full and fair
13 opportunity to express his or her views, positions, and
14 arguments.

15 The verdict must represent the considered
16 judgment of each juror. In order to return a verdict,
17 it is necessary that each juror agrees thereto. Your
18 verdict must be unanimous.

19 It is your duty as jurors to consult with one
20 another and to deliberate with a view to reaching an
21 agreement if you can do so without violence to
22 individual judgment. Each of you must decide the case
23 for yourself, but do so only after an impartial
24 consideration of the evidence in the case with the other
25 jurors. In the course of your deliberations, do not

1 hesitate to reexamine your own views and to change your
2 opinion if convinced it is erroneous, but do not
3 surrender your honest conviction as to the weight or
4 effect of the evidence solely based on the opinion of
5 the other jurors or merely for the purpose of returning
6 a verdict. Remember at all times that you are not
7 partisans. You are judges. Judges of the facts. Your
8 only interest is to seek the truth from the evidence in
9 this case.

10 If during your deliberations it becomes
11 necessary to communicate with me, please give a written
12 message to the court security officer who will bring it
13 to me. I will then respond as promptly as possible
14 either in writing or by meeting with you in the
15 courtroom. I will always first show the attorneys your
16 question and my response before I answer your question.
17 This procedure for asking questions in written form also
18 applies to any questions you might have concerning the
19 JERS system even if your question pertains to obtaining
20 technical assistance with the system.

21 Now, this is very important. You must never
22 disclose to anyone, including the Court, how the jury
23 stands numerically or otherwise on the matters you are
24 deciding until after you have reached a unanimous
25 verdict or have been discharged. In other words, if the

1 jury is split say six to six on some issue, the
2 existence of that split or the number on one side or the
3 other must not be disclosed to anyone, including me.

4 If we recess during your deliberations, you
5 must follow all the instructions I have given you
6 concerning your conduct during the trial. In
7 particular, do not discuss the case with anyone other
8 than your fellow jurors in the jury room when everyone
9 is present.

10 You were permitted to take notes during this
11 trial, and I want to remind you of the instructions I
12 gave you about your notes. Do not use your notes as
13 authority to persuade other jurors. Your notes should
14 be used only as aids to your own memory and must not be
15 used as authority to persuade the other jurors as to
16 what the evidence was during the trial. In the end,
17 each juror must rely on his or her own recollection or
18 impression as to what the evidence was.

19 You each have a paper copy of my jury
20 instructions to take with you into the jury room.
21 Attached to your individual copy of the jury
22 instructions is a copy of the verdict form. The verdict
23 form is self-explanatory and it contains all the
24 questions you need to answer as well as step-by-step
25 instructions. Read that verdict form carefully and

1 follow the instructions on it. The verdict form is
2 consistent with the instructions I have given to you.
3 Feel free to consult the paper copy of the jury
4 instructions as you deliberate. After you've reached
5 your unanimous verdict your foreperson must complete,
6 sign, and date the official verdict form. The official
7 verdict form will be given to you with an envelope and
8 will be marked with the word "original" at the top of
9 the form. After you have reached a verdict you are not
10 required to talk to anyone about the case unless I
11 direct you to do so.

12 Let me once again tell you that nothing said
13 in these instructions is intended to suggest in any way
14 what your verdict should be. The verdict is the
15 exclusive responsibility of the jury, not the judge.

16 When you have arrived at a verdict, notify the
17 court security officer, and you will be brought back
18 into the courtroom where the foreperson will render the
19 verdict orally.

20 Counsel, please approach.

21 (SIDEBAR)

22 MR. FALKNER: Your Honor, I would reiterate my
23 request for the missing witness instruction. I believe
24 all of the predicates have been met and that it's an
25 appropriate instruction in the case.

1 And secondly, I reiterate my request for a
2 special verdict form. I think, especially in light of
3 the difference in interstate commerce testimony as to
4 the two firearms, it's necessary, and the difference in
5 the evidence as to the possession of the firearms.

6 THE COURT: All right. I deny those requests
7 on the basis I denied them earlier. Anything else?

8 MS. KRASINSKI: No, your Honor.

9 THE COURT: We have 13 in the box. I'm going
10 to choose 14 as our alternate.

11 MR. FALKNER: The last juror?

12 THE COURT: Yes, unless you tell me -- it's
13 got to be --

14 MR. FALKNER: I believe she was selected as an
15 alternate.

16 THE COURT: Right. 13 and 14 are alternates.

17 MR. FALKNER: Oh, I'm sorry. My understanding
18 would be that 13 would sit on the jury and 14 would be
19 the alternate.

20 THE COURT: I don't know what to say when this
21 happens, but I'm going to choose 14 unless you give me
22 another reason.

23 MR. FALKNER: 14 to be the alternate?

24 THE COURT: Yes.

25 MR. FALKNER: Yes, I agree. Thank you.

1 THE COURT: All right.

2 (CONCLUSION OF SIDEBAR)

3 THE COURT: I hope you're not tired of that
4 music.

5 All right. Now, before the courtroom deputy
6 actually swears in the jury (sic), you'll notice that
7 there are 13 of you in the box, and a jury consists of
8 12. One of you is designated the alternate. It is
9 Juror No. 14.

10 Now, an alternate is still a juror and you
11 must still follow all my instructions. You probably
12 should stay here. And if you have to leave for any
13 reason, make sure that the courtroom deputy has a way of
14 contacting you immediately so that you could be brought
15 back to the courthouse. So she'll need just contact
16 information if you were to leave. But as an alternate,
17 you must follow all the instructions, I'm not going to
18 repeat them to you again, but all those instructions
19 about communication, research, et cetera.

20 So Juror No. 14 is an alternate and Juror No.
21 14 needs to retrieve whatever belongings that you have
22 in the deliberation room. There can be no discussion of
23 the case until Juror No. 14 leaves, and then you may
24 begin your deliberations.

25 Would the courtroom deputy now swear in the

1 court security officer.

2 (Deputy clerks swears in court security
3 officer)

4 (Jury begins deliberation)

5 (Chambers Conference)

6 THE COURT: This is only in the event,
7 obviously, there is a conviction. I just want to go
8 over these with you and make sure we consider anyone's
9 objections.

10 Now, let me just highlight the bold on page 3.
11 I'm going to remove that. I'm assuming you're not going
12 to bring in any additional evidence.

13 MS. KRASINSKI: We had discussed this, whether
14 or not there was going to be an objection as to whether
15 there needed to be nexus testimony as to the firearms --
16 or as to the ammunition. I don't think there needs to
17 be. If the Court does, I will recall Agent Forte and
18 have him examine the ammunition, but my understanding is
19 that that is not required. If the Court agrees, I do
20 not intend to put the jury through that.

21 THE COURT: Okay. I don't know the answer to
22 that so that's something I have to look at.

23 What is the case law on that?

24 MR. FALKNER: Your Honor, I was just looking
25 through Judge Torresen's model instructions, and I guess

1 what concerns me is the definition, so to speak, of
2 "involved in." So in terms of "used in," I think
3 ammunition that has been loaded into one of the firearms
4 involved in the offense and fired would clearly be used
5 in the offense, but there's not necessarily any evidence
6 of that and they're simply possessed alongside.

7 So I'm just looking right now. There's a
8 definition of "involved in" for the money laundering
9 forfeiture instruction, and I haven't even had a chance
10 to read it in full, but it's about two sentences long,
11 and perhaps it doesn't appear to bear directly but might
12 shed some light on what we should do here:

13 Property involved in a money laundering
14 transaction means the money being laundered, any
15 commissions or fees paid to the launderer, and any
16 property used to facilitate the laundering. Mingling
17 tainted funds with legitimate funds exposes the
18 legitimate funds to forfeiture as well if the mingling
19 was done for the purpose of concealing the nature or
20 source of the tainted funds. In other words, to
21 facilitate the money laundering.

22 I think what we might draw out of that is that
23 ammunition that somehow facilitated the offense of
24 possession of one of the firearms at issue -- I'm not
25 even sure whether that means that all .45 caliber

1 ammunition would necessarily be forfeitable, but perhaps
2 some of that ammunition may be if it was used somehow to
3 facilitate it or, like I said, was used in the gun or
4 something to that affect.

5 Ammunition for the rifle, I'm not sure how
6 that in any way facilitates this offense or was used in
7 this offense. It was merely simultaneously possessed,
8 but that doesn't, I don't think, further the possession
9 of the other items.

10 And so I'm concerned at least as to the
11 ammunition that the government has some burden I think
12 to demonstrate not just all of the ammunition but to
13 demonstrate what ammunition should be seized, if any,
14 and that there has to be some definition to the jury of
15 what it means to be involved in the offense.

16 MS. KRASINSKI: Your Honor, I think all of the
17 ammunition, the evidence established, was stored in this
18 case with the charged firearms. I think the evidence
19 established, assuming a guilty verdict, that the
20 defendant then took everything in that case, the
21 firearms and all of the ammunition, and gave that
22 together to someone. He possessed all of it together.
23 He sought to hide his possession of all of it.

24 I think -- and the forfeiture allegation
25 includes the ammunition seized on that day, not specific

1 caliber that day. I don't think there's any requirement
2 that it be a certain type of caliber that fits the
3 firearm. It's whether or not it was involved in the
4 offense. Here "involved in the offense" would include
5 involved in the defendant's attempting to transfer, hide
6 his possession, hide his ownership of all of the
7 contents of the case, including the firearms.

8 So I don't think there needs to be a further
9 definition of "involved in," but more importantly, I
10 think all of the ammunition, because all of it is
11 identified in the forfeiture allegation, is potentially
12 subject to forfeiture.

13 THE COURT: All right. Go ahead.

14 MR. FALKNER: I just reiterate I think what I
15 had already said, which is just because -- the crime is
16 possessing the firearm. The crime charged isn't hiding
17 the possession or anything like that. Even if it were,
18 ammunition being in that box doesn't in any way
19 facilitate or make it easier to hide that crime.

20 THE COURT: Let me ask you this. There was
21 evidence from at least Roya, and perhaps there was
22 another, but evidence that the defendant offered the
23 case as collateral for money, and wouldn't that
24 facilitate in some way the interest of the receiving
25 person to take the case because there would be a lot

1 more in it and the ammunition would be part of that, the
2 entirety of the collateral?

3 MR. FALKNER: So with regard to Mr. Roya, his
4 testimony was that he was surprised by and he got more
5 than he bargained for and that that wasn't what he
6 thought he was going to get. So I'm not sure that that
7 works with regard to him.

8 With regard to Mr. Prive the collateral issue,
9 as I recall, came up only after Mr. Prive had taken
10 possession of the box and that Mr. Irish was no longer
11 in possession at that time.

12 THE COURT: Remind me exactly how it came in
13 with Prive.

14 MR. FALKNER: I think -- I'm not positive, but
15 the best of my memory is that at the time -- he went to
16 Mr. Irish's house. Mr. Irish said, take the box. At
17 that point there had been no evidence of any discussions
18 about money. It was, get it out of my house essentially
19 so nobody gets hurt.

20 And then later at some point there were
21 discussions about Mr. Irish borrowing money from him,
22 and it was at that time that the idea of the firearms as
23 collateral had been broached.

24 THE COURT: Was it brought up by -- was the
25 testimony from Prive that the defendant offered it as

1 collateral?

2 MS. KRASINSKI: I believe Prive's testimony
3 was that the defendant asked him if he would buy it, and
4 then it sort of transitioned to using those items as
5 collateral.

6 But I would just note that I would argue that
7 given the defendant's direction and control of the
8 transfer of the case and all of its contents from Prive
9 to Mr. Roya, that although Mr. Prive had the case that
10 it was still the defendant that had constructive
11 possession of those items because he was directing and
12 controlling their location and where they went.

13 THE COURT: Okay. What I think I'm going to
14 do is just research this just a teeny bit. I'm leaning
15 toward finding that "involved in" or "used in" does not
16 need to be further clarified. Although -- I mean,
17 facilitating the charged crime, would you have any
18 objection to adding that? Involved in or used in --
19 clearly it wasn't used. There wasn't any evidence that
20 the ammo was used.

21 MS. KRASINSKI: I think there was testimony
22 that the defendant had shot the 1911, and so potentially
23 in that context.

24 Your Honor, I have to say I would like ten or
25 fifteen minutes now that I know what the particular

1 issue is to consult with our forfeiture AUSA.

2 THE COURT: And I will consult with my brain
3 trusts sitting right there, and you can consult with
4 your brain trusts.

5 So we'll look at this, and we can come back to
6 it.

7 The questions I need to decide are, first of
8 all, what if any ammunition should be seized.

9 And I think you're saying that really there
10 isn't enough evidence that any of the ammo should be up
11 for seizure.

12 MR. FALKNER: I think -- yes, I think it's
13 two-part. One is the argument that there isn't enough
14 evidence that any of it should be seized, but to the
15 extent that there is sufficient evidence to go to the
16 jury, that they do need to be instructed sufficiently as
17 to what "involved in the offense" means so that they can
18 intelligently make a determination as opposed to just --
19 otherwise "involved in the offense" is sort of
20 meaningless without some kind of further definition as
21 to what it means because, as I said, without a
22 definition it could mean anything from just simply being
23 possessed alongside it to somehow facilitating the
24 offense, and I think that there needs to be some
25 evidence that it in some way facilitated the offense.

1 It may be that it's, you know, sufficient that
2 it's used as collateral after the fact could have made
3 it somehow involved in the offense. I'm not conceding
4 that, but it may be that that's the case. And if that's
5 true, I think the jury needs to at least be instructed
6 that --

7 THE COURT: Facilitation?

8 MR. FALKNER: That there's some facilitation.

9 THE COURT: Okay. All right. All right then.

10 MS. KRASINSKI: I did note one typo maybe in
11 question 3 in the special verdict form. I don't think
12 that the indictment specifies magazines. So I think we
13 need to take out two words, "magazines and". I believe
14 the forfeiture allegation specifies only ammunition.

15 THE COURT: So was miscellaneous ammunition
16 involved -- or would that be were?

17 MR. FALKNER: I'm not really sure whether
18 that's a plural or a singular.

19 THE COURT: I don't think it matters. I'm not
20 going to worry about it at this juncture in the
21 narrative.

22 Okay. And so you're also -- tell me about the
23 interstate issue. You're thinking the ammo needs
24 interstate connection through calling Forte?

25 MR. FALKNER: Well, if the only theory by

1 which it's used in or involved in the offense is its
2 mere possession simultaneous to the possession of the
3 firearms and he were convicted of possession of the
4 firearms and the offense is the unlawful possession of
5 the firearms, then I think the possession of the
6 ammunition would have to be unlawful in and of itself
7 because otherwise it's not necessarily involved in the
8 offense.

9 THE COURT: Okay. But if the collateral -- if
10 facilitation is there, you think that would be
11 sufficient? It would be facilitating; thereby, it
12 doesn't need the separate interstate evidence.

13 MR. FALKNER: If the evidence of facilitation
14 were sufficient, I'm not sure that I've got a valid
15 argument that it would independently need to be
16 possessed in interstate commerce because it's somehow
17 then actually involved in or used in the offense.

18 THE COURT: Are there -- I've never done a
19 forfeiture. I've never done a felon in possession
20 either. There's no further argument, is there? It's
21 simply just giving them the instruction after the
22 evidence comes in? Do you know?

23 MS KRASINSKI: I have done it both ways. My
24 preference typically is not to have additional argument
25 because I just generally think the jury is saturated by

1 that time.

2 THE COURT: If in fact they convict, they will
3 slump and pout and I can't imagine because -- especially
4 with the weather coming and other issues.

5 All right. So do you both see it that way
6 then or would you want to be able to argue?

7 MR. FALKNER: I think in part it depends on
8 the jury instructions that you intend to give. I think
9 if they're instructed specifically on facilitation, I
10 would like to be able to make some argument that
11 certain -- well, it's in part one of the problems with
12 not having a special verdict in terms of the two
13 firearms either. Because if they found him guilty as to
14 the pistol or guilty as to the shotgun, it's unclear
15 again whether one of those is involved in the other
16 crime, in the possession of the other weapon, and
17 whether that somehow facilitated that.

18 But especially with regard to the ammunition,
19 I think that to be able to make some kind of argument
20 that it didn't somehow facilitate the offense because
21 that's obviously not the focus of the trial or any of
22 the arguments at trial given the different focus.

23 Some opportunity to be able to call the jury's
24 attention to relevant evidence that pertains to those
25 instructions I think might be warranted.

1 THE COURT: And could you both agree to limit
2 it to say five, ten minutes?

3 MR. FALKNER: Oh, absolutely.

4 THE COURT: That way I can tell the jury it's
5 limited, it's only five minutes or it's only ten
6 minutes.

7 And if I decide we're just going to keep
8 "involved in" or "used in," which is I think the pattern
9 instruction, then you don't see any need for argument,
10 it's if facilitation is added, or do you feel you want
11 to make arguments either way?

12 MR. FALKNER: That's a very good point. I
13 feel I would want to make an argument either way.

14 THE COURT: Okay.

15 MR. FALKNER: I suppose what I really meant
16 was the arguments that I make would depend on the way
17 that they were instructed as opposed to whether I would
18 want to make argument.

19 THE COURT: Okay. All right.

20 And so I guess we need to know, too, whether
21 or not there would be additional evidence offered.

22 MS. KRASINSKI: I need to go back and verify
23 this, but my recollection is that the government need
24 not establish nexus for forfeiture of ammunition in
25 relation to a firearms case. If my recollection is

1 correct, I am not putting the jury through that.

2 THE COURT: Okay. Well, we will let you
3 refresh your recollection. What we can do is just --
4 you notify Donna as soon as you can so we can get this
5 figured out so we don't have to make the jury wait if in
6 fact they do reach a verdict.

7 And I'm planning on -- just so you know, I'm
8 planning on telling them -- at a point in time where
9 maybe it's coming to the end of the case, just letting
10 them know that I'm going to let them decide how late
11 they stay, because the snow is supposed to come at like
12 midnight, 1:00 in the morning, and if they want to
13 deliberate longer here, I just think they should be
14 allowed to do that, and so we should all just be
15 prepared to stay nearby. Obviously I have to let the
16 marshals know because the Court obviously has to stay.
17 It's an open proceeding.

18 MR. FALKNER: I'm prepared to do whatever your
19 Honor wishes.

20 Just for simplification, my argument in the
21 morning was taken off the reserve list so I'm not --
22 there's no indication I need to be in Boston in the
23 morning.

24 THE COURT: Okay. All right. Excellent.

25 Okay. So let's go back. We'll reconvene in

1 maybe fifteen minutes. The sooner the better,
2 obviously, so we can get this done.

3 MR. FALKNER: Thank you, your Honor.

4 MS. KRASINSKI: Thank you.

5 (Conclusion of chambers conference)

6 (Chambers conference)

7 THE COURT: We have a juror question, and I
8 have a proposed answer as well. It came in as you were
9 gathering.

10 (Question given to counsel for review)

11 THE COURT: All right. Just for the record,
12 jury question No. 1:

13 Is there any documentation or documented
14 evidence that can be provided to substantiate the ATF
15 testimony regarding confirmation of interstate commerce
16 of the firearms?

17 My proposed answer is:

18 No, you may only consider the evidence that
19 was presented at trial.

20 That seems fairly straightforward.

21 MS. KRASINSKI: Well, the only question that I
22 have is that they could look at -- they would have to do
23 it in the courtroom, but theoretically they could look
24 at the markings on Government's Exhibit 7 themselves
25 that show the marking related to it being imported from

1 China, and that is in evidence.

2 THE COURT: How about then instead of saying
3 no I say:

4 You may only consider the evidence that was
5 presented at trial.

6 MR. FALKNER: I think that's fine, your Honor.

7 THE COURT: Is that sufficient?

8 MS. KRASINSKI: (Nods affirmatively.)

9 THE COURT: It takes the "no" out of it, which
10 obviously would exclude that, but that's okay?

11 MS. KRASINSKI: I think so, your Honor.

12 THE COURT: There were also photographs that
13 were presented of the gun, so "you may only consider the
14 evidence that was presented at trial" would encompass
15 that.

16 MR. FALKNER: I think that's the only proper
17 answer, your Honor.

18 THE COURT: Does the government agree?

19 MS. KRASINSKI: (Nods affirmatively.)

20 THE COURT: Okay. All right.

21 Let me hear -- do you have any other
22 information for me on this forfeiture, these forfeiture
23 issues?

24 MS. KRASINSKI: So ATF counsel informs us that
25 we are required to prove nexus related to ammunition

1 even in just the forfeiture context.

2 Candidly, I'll tell the Court that if the jury
3 comes back today, I am not putting the jury through
4 that. If the jury continues their deliberations into
5 tomorrow, I think that is something that I can
6 streamline very quickly through Agent Forte. But if
7 they come back today, I'm not going to do that.

8 ATF counsel tells us, I don't have a case to
9 cite for the Court, that "involved in", it typically
10 uses its common meaning, but that it usually means
11 seized in the same context on the same date, and that's
12 the best we could do in limited time.

13 THE COURT: All right. And what I've found
14 thus far in terms of research, what they've found, is
15 that the phrase "involved in" is given expansive
16 interpretation, and so facilitation would narrow the
17 definition as opposed to expand it.

18 So at this point at least that's what we've
19 found. We're still looking.

20 But if that is the case and that bears out in
21 the law, it seems to me that narrowing that definition
22 doesn't make sense.

23 We did find case law, though, that requires
24 there be a substantial connection, and I don't know if
25 that is included in these instructions.

1 We're still looking at this. I haven't
2 resolved it finally yet.

3 Did you have anything further?

4 MR. FALKNER: I spent a good amount of the
5 time that we were out trying to research the issue, and
6 so far I'm coming up relatively empty-handed.

7 THE COURT: Okay. All right.

8 MR. FALKNER: I would just ask vis-à-vis the
9 jury question if when Mr. Irish is brought into the
10 courtroom, if I can have a moment to consult with him to
11 see whether he has any other input. I did inform him
12 that he would have some input.

13 THE COURT: Here's what we're going to do on
14 that. My practice is to keep the jury in the
15 deliberation room unless there's some reason to bring
16 them to the courtroom because it just takes so much time
17 to orchestrate that. It takes away from their ability
18 to continue deliberating.

19 So what I intend to do is to make sure you
20 have a copy for your client and your records of the
21 actual question and then a copy of the instruction I
22 intend to send back into the deliberation room.

23 If there's some reason that we would need to
24 bring them out and have me speak to them, I'll do it. I
25 want to make sure he obviously has access to everything,

1 but ultimately I don't see this as something I want to
2 interrupt deliberations for.

3 MR. FALKNER: So you intend to send a written
4 response rather than respond orally?

5 THE COURT: Correct. Correct.

6 And I want to make sure I have my JA type up
7 and print out for you and your client the actual answer
8 that I'll give. So this is obviously not the actual
9 answer that we'll send in.

10 MR. FALKNER: Understood.

11 THE COURT: All right.

12 Okay. So let me get you the final version of
13 this and bring you copies so that you can take that down
14 to him.

15 MR. FALKNER: Thank you, your Honor.

16 THE COURT: So just go ahead and stay here, if
17 you would.

18 And I don't think we need our court reporter
19 to just transfer those. We'll just make sure that
20 everybody gets the final copy of that document I'm
21 sending in to the jury to answer that question.

22 And we're all in agreement that the answer
23 that we've proposed is okay with everybody, we're all in
24 agreement on it?

25 MS. KRASINSKI: Yes.

1 MR. FALKNER: Yes.

2 THE COURT: Okay. Remove the word "no."

3 MR. FALKNER: Thank you, your Honor.

4 (Conclusion of chambers conference)

5 (Chambers Conference)

6 THE COURT: All right. So we're looking
7 further at the forfeiture issue, studying this, and I
8 think we've come full circle and think that I should
9 rely on the statutory language that's there.

10 The substantial connection language comes from
11 a wholly different statute. So "involved in or used
12 in."

13 I do have a proposal for the government though
14 in terms of just making this even simpler, which would
15 be to just decide not to go after the ammo.

16 MS. KRASINSKI: That's fine, your Honor.

17 THE COURT: You're willing to do that?

18 MS. KRASINSKI: I am, your Honor.

19 THE COURT: Because then it's just you would
20 be arguing on forfeiture. The arguments would be more
21 limited. And it's going to depend obviously on which
22 gun they find or ultimately they would have to make a
23 separate forfeiture finding. We won't know which gun.

24 I've tried to come up with a special verdict
25 form that might work, and there's just nothing that

1 wouldn't create unanimity problems, because in this case
2 they only have to find one gun and if the special
3 verdict form is written to separate out findings with
4 respect to each gun, it's a very, very complicated thing
5 to do without suggesting to a jury that they have to
6 make unanimous findings either not guilty or guilty with
7 respect to each gun, and ultimately the government
8 simply needs to prove one gun.

9 So I have contemplated a special verdict, we
10 have tried writing one, and each time I've studied it it
11 seems to raise more problems than it solves.

12 I agree that knowing which gun might make your
13 forfeiture argument somewhat more simple, but at least
14 we wouldn't have to have added evidence.

15 MS. KRASINSKI: That's fine, your Honor.

16 THE COURT: All right.

17 MS. KRASINSKI: I really have heartburn about
18 putting the jury through it anyway just as a practical
19 matter.

20 THE COURT: It's me they're going to be upset
21 with. Don't worry. I'll take the hit.

22 So ultimately I think I'm going to take the
23 ammo out of the forfeiture instruction, but basically
24 we're going to keep it as I had originally proposed, and
25 I'll get rid of "together with any additional evidence

1 offered."

2 That's my ruling. I'm going to go try to
3 finalize that.

4 Does anybody want to say anything else? Have
5 you been enlightened any further? Anything you can
6 share with me?

7 MR. FALKNER: I haven't, your Honor.

8 I would just -- I guess I object and ask for
9 the language as to that it be used in facilitating the
10 offense.

11 I understand your ruling. I'm just objecting
12 for the record.

13 THE COURT: And I understand.

14 Just for the record, too, if we could come up
15 with a special verdict form that made it clear which gun
16 and the jury were to convict and find both guns, there
17 would be no need for forfeiture, right?

18 MR. FALKNER: Right.

19 THE COURT: That was my motivation for coming
20 up with a special verdict form. In addition, you
21 requested it and I thought perhaps the government would
22 agree to it, but ultimately I have not been able to come
23 up with a form that wouldn't introduce unanimity
24 problems and confusion so --

25 MR. FALKNER: I don't know if it's too late

1 and if your Honor would consider giving them a new
2 verdict form when you've already given them a verdict
3 form.

4 THE COURT: Well, that would be another issue
5 we would obviously all have to talk about. So that
6 raises concerns as well.

7 It's the ammo and the issue of the forfeiture
8 that made me start to think about the possibility of a
9 special verdict form helping you make your arguments,
10 but ultimately I think we've got to divide this up.
11 Ultimately the first question for them is more simple
12 and they don't have to make findings as to which gun.
13 They simply need to find with respect to one gun.

14 (Note is brought in and given to the Court)

15 Okay. They have a verdict. So I'm glad we
16 finalized this. Now we'll just need to type it if in
17 fact there's a conviction.

18 You were able to talk with your client?

19 MR. FALKNER: About the question, yes.

20 THE COURT: Okay. All right.

21 All right. Thank you.

22 (Conclusion of chambers conference)

23 (IN COURT - JURY PRESENT)

24 THE COURT: All right. I understand the jury
25 has reached a verdict.

1 Who is the jury foreperson?

2 (Juror raises his hand)

3 THE COURT: All right. And has the jury
4 reached a unanimous verdict?

5 THE JURY FOREPERSON: Yes.

6 THE COURT: All right. Would you please hand
7 the verdict form to the courtroom deputy.

8 (Deputy clerk gives the verdict form to the Court)

9 THE COURT: All right. Your verdict will now
10 be read aloud by the courtroom deputy. Please listen
11 carefully, because after the verdict is read aloud the
12 lawyers may ask to poll the jury, which means that the
13 courtroom deputy would just ask each one of you
14 individually if the verdict as read aloud is your
15 individual verdict.

16 THE CLERK: The United States District Court
17 for the District of New Hampshire, United States of
18 America versus Johnathon Irish, criminal case number
19 19-cr-251-LM, verdict form:

20 We, the jury, in the above captioned case return the
21 following verdict:

22 Question 1: As to Count 1, which charges the
23 defendant with being a prohibited person in possession
24 of a firearm, guilty.

25 Signed by the foreperson on today's date.

1 THE COURT: Would counsel like to have the
2 jury polled?

3 MR. FALKNER: Please, your Honor.

4 THE COURT: All right.

5 THE CLERK: Foreperson and members of the
6 jury, listen to the verdict as the Court has recorded
7 it. I will read it again, and then I will ask you each
8 individually if this is your verdict.

9 Verdict: We, the jury in the above captioned
10 case, return the following verdict:

11 As to Count 1, which charges the defendant
12 with being a prohibited person in possession of a
13 firearm: Guilty.

14 Juror No. 1, is that your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Juror No. 3, is that your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror No. 4, is that your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Juror No. 5, is that your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Juror No. 6, is that your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror No. 7, is that your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Juror No. 8, is that your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror No. 9, is that your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Juror No. 10, is that your
6 verdict?

7 THE JUROR: Yes.

8 THE CLERK: Juror No. 11, is that your
9 verdict?

10 THE JUROR: Yes.

11 THE CLERK: Juror No. 12, is that your
12 verdict?

13 THE JUROR: Yes.

14 THE CLERK: Juror No. 13, is that your
15 verdict?

16 THE JUROR: Yes.

17 THE COURT: All right. In view of your
18 verdict that the defendant, Johnathon Irish, is guilty
19 of being a prohibited person, a felon, in possession of
20 a firearm, you have one more task to perform before I
21 discharge you. You must now decide whether the
22 defendant should surrender to the government his
23 ownership interest in certain property as a penalty for
24 committing a crime. We call this a forfeiture. The
25 government alleges that the defendant should have to

1 surrender the following property to it: a Sig Sauer
2 pistol and a Catamount Fury shotgun.

3 Under federal law, any person who is convicted
4 of being a felon in possession of a firearm shall
5 forfeit any firearm "involved in or used in" that
6 violation. Therefore, the government is entitled to
7 forfeiture if it proves by a preponderance of the
8 evidence that the firearms listed above were involved in
9 or used in the offense for which you've already found
10 the defendant guilty.

11 Note that this standard of proof is different
12 than the one you used in determining whether the
13 defendant was guilty of the crime charged. My previous
14 instructions on the government's burden of proof
15 regarding your verdict on the guilt of the defendant do
16 not apply to your deliberations at this phase of the
17 proceedings regarding forfeiture. In deliberating and
18 deciding your verdict on forfeiture, I instruct you that
19 the government need only prove by a preponderance of the
20 evidence that the specified firearms were involved in or
21 used in the defendant's crime. The government is not
22 required to prove forfeiture beyond a reasonable doubt.

23 I repeat, the government must establish by a
24 preponderance of the evidence that the firearms the
25 government alleges are subject to forfeiture were

1 involved in or used in the defendant's crime. This
2 burden of proof is easier to meet than the burden of
3 proof you applied in the guilt phase of your
4 deliberations, which was beyond a reasonable doubt. To
5 meet this burden, the government must convince you that
6 it is more likely than not that the firearms described
7 were involved in or used in the crime for which you
8 found the defendant guilty.

9 While deliberating, you may consider any
10 evidence, including testimony, admitted during the
11 trial. All of my previous instructions regarding direct
12 and circumstantial evidence, credibility of witnesses,
13 and your duty to deliberate apply with respect to your
14 deliberations regarding forfeiture. However, you must
15 not re-examine your previous determination regarding the
16 defendant's guilt for the crime charged. I instruct you
17 specifically not to discuss in your forfeiture
18 deliberations whether the defendant is guilty or not
19 guilty of the firearms violation.

20 I further instruct you that you should not
21 consider what might happen to the property in
22 determining whether it is subject to forfeiture. For
23 example, you should disregard any claims that other
24 persons may have to the property. Such issues will be
25 resolved by the Court at a later time. Your sole

1 concern is whether the government has proven that it is
2 more likely than not that the firearms described were
3 involved in or used in the crime for which you have
4 found the defendant guilty.

5 You will render your verdict using a special
6 verdict form. The special verdict form lists each of
7 the items of property the government alleges are subject
8 to forfeiture, the Sig Sauer pistol and the Catamount
9 Fury shotgun, and asks whether each item is subject to
10 forfeiture. You may answer each question on the special
11 verdict form by simply putting an "X" or a check mark in
12 the space provided next to the words "YES" or "NO."

13 You must reach a unanimous verdict as to
14 whether the government has met its burden of proof
15 regarding forfeiture on each individual item. That is,
16 everyone must agree that the government did or did not
17 prove by a preponderance of the evidence that the
18 individual item listed was used in or involved in the
19 defendant's crime.

20 When you have arrived at a verdict, you will
21 notify the court security officer and you'll be brought
22 back into the courtroom where the foreperson will render
23 the verdict orally, just as you did with respect to the
24 guilt phase of the trial.

25 Obviously, we're coming close to 5:00 p.m.

1 You're going to hear no more than five minutes of
2 argument by counsel, and then you will retire to the
3 deliberation room and you will take with you a copy of
4 my instructions that I just read to you. You'll have
5 the verdict form, you'll have the original verdict form
6 for forfeiture as well, and you will follow that verdict
7 form to answer the questions you are deliberating.

8 Now you will decide -- I'm going to let you
9 decide as a group whether you continue to stay through
10 later today. I've made arrangements if in case you do
11 want to stay. There is snow in the forecast. It is
12 supposed to hit, I've been told, around midnight
13 tonight. So if there is snow tomorrow, we may start
14 later in the day tomorrow. I'll obviously be
15 communicating that with you through the court reporter
16 (sic), but I'm going to let you make that decision with
17 respect to your deliberations with respect to
18 forfeiture.

19 You're now going to hear no more than five
20 minutes from counsel, and I will be timing that. I will
21 interrupt if it goes beyond five minutes.

22 Attorney Krasinski.

23 MS. KRASINSKI: Ladies and gentlemen, I'm not
24 going to rehash all the evidence that we discussed
25 earlier. I'll just simply say the evidence establishes

1 by a preponderance of the evidence that both the pistol
2 and the shotgun were involved in this offense.

3 Thank you.

4 THE COURT: Attorney Falkner.

5 MR. FALKNER: I also will be substantially
6 shorter than the time allotted.

7 I don't know which firearm you have found that
8 he possessed, or both. I have no way to know that. I
9 simply point out to you when you're considering whether
10 a firearm was involved in the offense, I don't think
11 that it's enough for you to simply say, well, he
12 possessed both, if you do not think that he possessed
13 one of the firearms or you do not think one of the
14 firearms was in interstate commerce. I think in order
15 for you to find that it was involved in the offense,
16 obviously you will heed the Judge's instructions, but I
17 just ask you to look carefully -- if you found him
18 guilty based only on one of those two firearms, to
19 carefully consider whether that other firearm actually
20 was indeed involved in the offense and not to just
21 simply say, well, both were found together and that's
22 enough.

23 Thank you.

24 THE COURT: Thank you.

25 All right. You will return to the

1 deliberation room. You will be given a copy of the
2 instructions and begin your deliberations.

3 And you will communicate to the court security
4 officer, my courtroom deputy, whether you want to stay
5 longer to continue deliberating or whether you want to
6 leave.

7 If we do leave and we come back, then again
8 the same -- my same instructions apply and you will not
9 be allowed to talk about the case with anyone and we
10 will come back and I'll give you a time on that for
11 tomorrow, but I want you to be able to decide whether or
12 not you stay past 5:00 o'clock. All right?

13 MR. FALKNER: Your Honor, may we be seen
14 before the jury is sent out?

15 THE COURT: Yes.

16 (SIDEBAR)

17 MR. FALKNER: I just wanted to state my
18 objection for the record to the instructions as given
19 before the jury was sent out to deliberate in the sense
20 that I had requested a clear and convincing evidence and
21 intention to use the firearm in the offense instruction
22 previously which were overruled.

23 And finally, that I had requested a more
24 expansive definition of "involved in the offense," and I
25 wanted to preserve those objections.

1 THE COURT: I appreciate that. Each is
2 preserved and overruled.

3 MR. FALKNER: Thank you, your Honor.

4 (CONCLUSION OF SIDEBAR)

5 THE COURT: Okay. All right. Let the jury
6 begin deliberations on the forfeiture.

7 (Jury deliberates)

8 (IN COURT - JURY PRESENT)

9 THE COURT: All right. I understand the jury
10 has reached a verdict.

11 I'm going to ask the foreperson, has the jury
12 reached a unanimous verdict?

13 THE JUROR FOREPERSON: Yes, your Honor.

14 THE COURT: All right. Would you please hand
15 the verdict form to the courtroom deputy.

16 (Courtroom deputy gives verdict form to the Court)

17 All right. The same rules apply. It will be
18 read aloud. Listen carefully because if a lawyer wants
19 to poll the jury, the same process will be used.

20 THE CLERK: The United States District Court
21 for the District of New Hampshire, United States of
22 America versus Johnathon Irish, criminal case number
23 19-cr-251-LM, special verdict form regarding forfeiture:

24 We, the jury, return the following special
25 verdict as to the following properties in which the

1 government has alleged that the defendant, Johnathon
2 Irish, has an interest:

3 1. Was one Sig Sauer 1911 .45 caliber pistol,
4 serial number GS 34120, involved in or used in the crime
5 for which the defendant was convicted in Count 1?

6 Answer: Yes.

7 Question 2: Was one Zijiang Machinery Co.,
8 Model Catamount Fury, 12-gauge shotgun, serial number
9 CAT-002586, involved in or used in a crime for which the
10 defendant was convicted in Count 1?

11 Answer: Yes.

12 Signed by the foreperson on today's date,
13 February 12, 2020.

14 THE COURT: Would you like the jury polled,
15 either counsel?

16 MR. FALKNER: Please, your Honor.

17 THE COURT: All right.

18 THE CLERK: Foreperson and members of the
19 jury, I'm going to poll you as to the special verdict I
20 just read aloud.

21 Juror No. 1, is that your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Juror No. 3, is that your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror No. 4, is that your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 5, is that your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror No. 6, is that your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror No. 7, is that your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Juror No. 8, is that your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Juror No. 9, is that your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror No. 10, is that your

13 verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror No. 11, is that your

16 verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror No. 12, is that your

19 verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 13, is that your

22 verdict?

23 THE JUROR: Yes.

24 THE COURT: All right. We have come to the

25 end of the day and the end of your service.

1 I want to thank you publicly for your service.
2 It's not often that we as citizens get to serve our
3 country, but you really are serving your country by
4 serving as a juror in this case.

5 You are officers of the court, and we all
6 honor your service.

7 You probably noticed when you walk into the
8 courtroom or leave the courtroom, everyone in this room
9 stands, including me. We are very thankful to you for
10 your time, your attention.

11 I'm going to ask you just to stay one second
12 longer so that I can just thank you personally and come
13 in and say goodbye to you, so if you would just wait for
14 me for a very short moment so I can send you off
15 properly, but thank you very much.

16 (IN COURT - NO JURY PRESENT)

17 THE COURT: All right. The sentencing hearing
18 date in this case is May 28th, this year, at 10:00 a.m.

19 Anything further?

20 MS. KRASINSKI: No, your Honor.

21 MR. FALKNER: No, your Honor.

22 THE COURT: All right. The defendant is
23 remanded and Court is adjourned.

24 (Jury trial concluded at 5:10 p.m.)
25

C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that
the foregoing transcript is a true and accurate
transcription of the within proceedings, to the best of
my knowledge, skill, ability and belief.

Submitted: 3-24-20

/s/ Susan M. Bateman
SUSAN M. BATEMAN, RPR, CRR